

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 9, 2004

Court convened at 9:00 a.m.

Present: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D. E. Moore

D041251 Davidson Coscan Partners, et al. v. United States Fidelity and Guarantee Company
Cause called on merits. Joseph L. Oliva, Esq. argued for appellant. Mark Flory, Esq. argued for respondent. Mr. Oliva replied. Cause submitted.

D041093 Weegar v. Sweetwater Union High School District
Cause called on merits. Jack M. Sleeth, Esq. argued for appellant. David A. Miller, Esq. argued for respondent. Mr. Sleeth replied. Cause submitted.

Court recessed at 9:40 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D042056 Moyer v. New York Life Insurance Company.
Cause called on merits. Jon Earl Moyer, argued for appellant in pro per. George S. Howard, Esq. argued for respondent. Mr. Moyer replied. Cause submitted.

Court recessed at 10 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion

D041090 La Caja Del Tango, et al.
Cause called on merits. Gerald M. Dawson, Esq. argued for appellant. Randal R. Morrison, Esq. argued for respondent. Mr. Dawson replied. Cause submitted.

Court recessed at 10:30 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke
Clerk: D. E. Moore

D042475 In re Robert B. et al., Juveniles
Cause called on merits. Donna B. Kaiser, Esq. argued for appellant, father. Craig E. Arthur, Esq. argued for appellant, mother. Gary Seiser, Deputy County Counsel argued for respondent. Linda Fabian, Esq. argued for the minors. Ms. Kaiser replied. Cause submitted.

Court recessed at 1:50 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 9, 2004 (Continued)

D041081 Tanner et al. v. Conte

Cause called on merits. Jerry D. Hemme, Esq. argued for appellant. David A. Niddrie, Esq. argued for respondent. Mr. Hemme replied. Cause submitted.

Court recessed at 2:25 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

D041622 Parker v. Marshall

Cause called on merits. Marilyn Parker, appellant in pro per, was present in oral argument and submitted on the briefs. Mike Neil, Esq. was present in oral argument for respondent and submitted on the briefs. Cause submitted.

D042072 Skane et al. v. City of San Diego et al.

Cause called on merits. James Bruce Henderson, Esq. argued for appellant. Charles A. Bird, Esq. argued for respondent. Mr. Henderson replied. Cause submitted.

D041936 Kitlas v. Cepeda

Cause called on merits. Terry D. Phillips, Esq. argued for appellant/cross-respondent. William J. Freed, Esq. argued for respondent/cross-appellant. Mr. Phillips replied. Cause submitted.

D041058 Koebke et al. v. Bernardo Heights Country Club

Cause called on merits. H. Paul Kondrick, Esq. argued for appellant. John Raymond Shiner, Esq. argued for respondent. Mr. Kondrick replied. Cause submitted.

D040808 Burrows et al. v. Qualcomm, Inc.

Cause called on merits. Steven S. Kane, Esq. argued for appellant. Marcelle E. Mihaila, Esq. argued for respondent. Mr. Kane replied. Cause submitted.

Court recessed at 4:30 p.m. until Tuesday, February 10, 2004 at 9 a.m.

D041859 People v. Jones

The judgment is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Nares, J.

D042284 People v. Foster

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., McDonald, J.

D042008 In re Adoption of Natalie L., a Juvenile

The judgment below declaring Natalie free of Richard's custody and control is affirmed. Costs on appeal are awarded to Misty. Benke, Acting P.J.; We Concur: Huffman, J., McDonald, J.

D042387 Pan Pacific Yachts, Inc. v. Vitech Marine Company, LTD.

The order is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

D041516 Lyon v. San Diego County Employees Retirement Association

The judgment is affirmed. Benke, Acting P.J.; We Concur: Haller, J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 9, 2004 (Continued)

D041394 People v. McDonald et al.

The petition for rehearing is denied.

D043700 In re Inglett on Habeas Corpus

The petition is denied.

D041165 People v. Hurtado

The order is affirmed. Nares, J.; We Concur: McConnell, P.J., McDonald, J.

D042405 People v. Green

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Haller, J.

D043658 Ravet v. Superior Court of San Diego County/Young

The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 10, 2004

D041913 People v. Bruce

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., Irion, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke

Clerk: D. E. Moore

D042536 In re Keith D., a Juvenile

Cause called on merits. Craig E. Arthur, Esq. argued for appellant. Janice Casillas, Deputy County Counsel argued for respondent. Robert W. Gehring, Esq. argued for minor. Mr. Arthur replied. Cause submitted.

D040651 Kreutzer et al. v. Metabolife International, Inc.

Cause called on merits. Manuel Corrales, Jr., Esq. argued for appellant. R. Gaylord Smith, Esq. argued for respondent. Mr. Corrales replied. Cause submitted.

D041540 Hodo v. Hansen Publishing, LLC

Cause called on merits. Gary D. Higgins, Esq. argued for appellant. Sondra Sue Sutherland, Esq. argued for respondent, Cheryl Ranes-Sult and etc. Mr. Higgins replied. Cause submitted.

Court recessed at 10 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

D043354 Ericka S. v. Superior Court

Cause called on merits. Christopher R. Booth, Esq. argued for petitioner. Kathryn Bird, Deputy County Counsel argued for respondent. Mr. Booth replied. Cause submitted.

Court recessed at 10:35 a.m. until 1:30 p.m.

Court convened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

Clerk: D. E. Moore

D041501) The Ronald Bonaguidi Irrevocable Insurance Trust v. O'Connor

D041771) Ronald Bonaguidi v. O'Connor

Cause called on merits. Dean T. Kirby, Esq. argued for appellant. Dick A. Semerdjian, Esq. argued for respondent. Mr. Kirby replied. Cause submitted.

D041142 Bowen et al. v. Ziasun Technologies, Inc.

Cause called on merits. James Alan Shalvoy, Esq. argued for appellant. John Stewart Clifford, Esq. argued for respondent. Mr. Shalvoy replied. Cause submitted.

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 10, 2004 (continued)

D041357 Smith et al. v. Dodge et al.

Cause called on merits. William R. Fuhrman, Esq. argued for appellant. Nancy L. Vaughan, Esq. argued for respondent. Mr. Fuhrman replied. Cause submitted.

Court recessed at 2:34 p.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D041042 Ramona Equipment Rental, Inc., et al. v. Piva et al.

Cause called on merits. Charles Nachand, Esq. argued for appellant. Judy G. Keim, Esq. was present in oral argument for appellant, but did not argue. Scott A. Smylie, Esq. argued for respondent, Piva. Gregory James Testa, Esq. argued for respondent, You Haul Concrete. Mr. Nachand replied. Cause submitted.

Court recessed at 3:15 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D040766 Ragen v. Peterson

Cause called on merits. David A. Niddrie, Esq. argued for appellant. Sandra J. Brower, Esq. argued for respondent. Mr. Niddrie replied. Cause submitted.

Court recessed at 3:52 p.m. until Wednesday, February 11, 2004 at 9 a.m.

D041162 Barratt American Inc. v. City of Encinitas et al.

The portion of the judgment concluding Barratt's allegations that the City improperly increased the fees and that the increased fees exceeded the reasonable costs of providing the services rendered are time-barred is reversed and the matter is remanded for further proceedings in accordance with this opinion. Otherwise, the judgment is affirmed. CERTIFIED FOR PUBLICATION. McIntyre, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

D043706 Bravo v. Superior Court of San Diego County/People

The petition is denied.

D043694 Reynolds et al. v. Superior Court of San Diego County/HCR Manor Care Inc., et al.

The petition is denied.

D043693 LeBeau v. Superior Court of San Diego County/Henkel

The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 10, 2004 (continued)

D043554 Robert R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Robert R. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D043596 Patty W. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Patty W. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case as to Patty W. is dismissed.

D040917 People v. Williams

The petition for rehearing is denied.

D042417 Kelly v. Pacifica Reo, LLC/Statewide Group, Inc., et al.

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

D043682 Ocular v. Superior Court of San Diego County/People

The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 11, 2004

D043487 Carol S. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Carol S. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D043578 Dawn L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Dawn L. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D042377 In re Leania P. et al., Juveniles

The judgments are affirmed. Nares, J.; We Concur: Benke, Acting P.J., McDonald, J.

D041259 Franklin v. North County Ford et al.

The judgment is affirmed. Franklin shall recover his costs on appeal. The matter is remanded to the trial court with directions to consider any motion Franklin may make for and award of attorney fees on appeal and , if made, to award to Franklin reasonable attorney fees incurred on appeal. McDonald, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

D041186 People v. Avelino

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McDonald, J.

D043720 In re Myrna S., on Habeas Corpus

The petition is denied.

D043696 City of San Diego v. Superior Court of San Diego County/Cook et al.

The petition is denied.

D043596 Patty W. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Jamie W. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron
Clerk: D. E. Moore

D042010 Blackburn v. Brady

Cause called on merits. Kevin J. Hoyt, Esq. argued for appellant. Matthew Yarling, Esq. argued for respondent. Mr. Hoyt replied. Cause submitted.

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 11, 2004 (Continued)

Court recessed at 9:17 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D040337 Brenton v. Metabolife International, Inc.

Cause called on merits. Jeffry A. Miller, Esq. argued for appellant. Christopher Einar Grell, Esq. argued for respondent. Mr. Miller replied. Cause submitted.

D040456 Johnson et al. v. Metabolife International, Inc.

Cause called on merits. Jeffry A. Miller, Esq. argued for appellant. Mr. Miller's argument is incorporated in this case at the request of the court with the Brenton argument (D040337.) Anthony Chu, Esq. argued for respondent. Mr. Miller replied. Cause submitted.

Court recessed at 9:46 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion

D042249 Ralphs Grocery Company v. Massie et al.

Cause called on merits. Henry Lederman, Esq. argued for appellant. Patrick Eugene Turner, Esq. argued for respondent. Massie. Miles Eric Locker, Esq. argued for respondent, Lujan. Mr. Lederman replied. Cause submitted.

Court recessed at 10:44 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

Clerk: D. E. Moore

D041965 San Elijo Hills, Unit II Property Owners Association v. Layton

Cause called on merits. Keenan A. Parker, Esq. argued for appellant. Daniel Phillip Wien, Esq. argued for respondent. Mr. Parker replied. Cause submitted.

D041241 People v. Morgan

Cause called on merits. Carl Fabian, Esq. argued for appellant. Douglas Lee, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

D040402 M & M Realty Partners IV L.P. v. Zora et al.

Cause called on merits. Stephen Ellis, Esq. argued for appellant/cross-respondent. Michael Floyd Wright, Esq. argued for respondent/cross-appellant. Mr. Ellis replied. Cause submitted.

Court recessed at 2:50 p.m. until Friday, February 13, 2004 at 9:00 a.m.

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 11, 2004 (continued)

D039913 People v. McIntyre

The petition for rehearing is denied.

D043716 In re Perez on Habeas Corpus

The petition is denied.

D042710 In re Daniel S., a Juvenile

The order is affirmed. CERTIFIED FOR PUBLICATION. Huffman, J.;

We Concur: Benke, Acting P.J., Aaron, J.

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 13, 2004

D043369 In re Donovan B., a Juvenile

The appeal is dismissed. Huffman, J.; We Concur: Benke, Acting P.J., Irion, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

Clerk: D. E. Moore

D041207 Tadlock et al. v. Southwestern Yacht Club et al.

Cause called on merits. Melody A. Kramer, Esq. argued for appellant. Paul R. Kennerson, Esq. argued for respondent. Ms. Kramer replied. Cause submitted.

Court recessed at 9:25 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D041873 Wright v. City of San Diego et al.

Cause called on merits. Sean Simpson, Esq. argued for appellant. David Engel-Brodie, Deputy City Attorney argued for respondent. Mr. Simpson replied. Cause submitted.

D042053 Guinan v. Soleil Balboa Park, Inc.

Cause called on merits. Thomas P. Sayer, Esq. argued for appellant. David Percy Hall, Esq. argued for respondent. Mr. Sayer replied. Cause submitted.

Court recessed at 10:20 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

Clerk: D. E. Moore

D041393 Sea Winds Aviation, Inc. v. City of Oceanside

Cause called on merits. Alejandro Matuk, Esq. argued for respondent. Tracy R. Richmond, Esq. argued for appellant. Cause submitted.

D040734 People v. Cleveland

Cause called on merits. Gary E. Nelson, Esq. argued for appellant. Gil Gonzalez, Deputy Attorney General argued for respondent. Mr. Nelson replied. Cause submitted.

D042226 Drzewiecki v. Western Family Insurance Company

Cause called on merits. No appearance by appellant's counsel. Gregory C. Kane, Esq. argued for respondent. Cause submitted.

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 13, 2004 (Continued)

D041183 San Diego County Veterinary Medical Association v. County of San Diego
Cause called on merits. Ronald T. Vera, Esq. argued for appellant. Morris G. Hill, Deputy County Counsel argued for respondent. Mr. Vera replied. Cause submitted.

Court recessed at 2:30 p.m. until Tuesday, February 17, 2004 at 8:30 a.m.

D042402 In re Alberto S. et al., Juveniles
Respondent's request for publication filed on February 3, 2004 is denied.

D043713 People v. Nychay
The appeal in this matter challenges solely the validity of a plea or admission. Appellant's request for certificate of probable cause having been denied and no appealable issues having been raised in compliance with California Rules of Court, rule 30(b), the appeal is dismissed.